

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, JUANY GUZMAN,  
BRANDON ROSE, IRVING COLLADO, ANDRES  
SALAS, BENGALY KONATE, MICHAEL J.  
RODRIGUEZ, WILTON A. DARDAIN, and JUAN  
CORREA,

*Plaintiffs,*

**15 CV 1338**

*v.*

THE FRESH DIET INC.,  
LATE NIGHT EXPRESS COURIER SERVICES, INC.  
(FL),  
FRESH DIET EXPRESS CORP. (NY),  
THE FRESH DIET – NY INC. (NY),  
FRESH DIET GRAB & GO, INC. (FL), *a/k/a*  
YS CATERING HOLDINGS, INC. (FL), *d/b/a*  
YS CATERING, INC. (FL),  
INNOVATIVE FOOD HOLDINGS, INC. (FL),  
FRESH DIET EXPRESS CORP. (FL),  
NEW FRESH CO., LLC (FL),  
SYED HUSSAIN, *individually*,  
JUDAH SCHLOSS, *individually*, and  
SCHER ZALMAN DUCHMAN, *individually*,

**DECLARATION OF  
WALKER G.  
HARMAN, JR.**

*Defendants.*

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Pursuant to 28 U.S.C. § 1746, I, Walker G. Harman, Jr., an attorney admitted to practice in the United States District Court for the Southern District of New York, declare under penalty of perjury that the following is true and correct:

1. I am an attorney of record for Plaintiffs and commenced this action on their behalf. This Declaration is based upon my personal knowledge of the facts contained herein, as well as my knowledge as Plaintiffs' attorney.
2. I submit this Declaration in support of The Harman Firm, LLP's Motion to Withdraw as Attorneys for Plaintiffs Wilton A. Dardaine and Michael J. Rodriguez in this action.

3. Plaintiffs, through their counsel, The Harman Firm, LLP (the “Firm”), filed this action on February 24, 2015, alleging unpaid overtime and retaliation claims against Defendants under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*, and the New York State Labor Law (NYLL), N.Y. Lab. Law §§ 1 *et seq.*

4. On December 19, 2017, Plaintiffs filed their Fifth Amended Complaint in this action.

5. In preparing the Fifth Amended Complaint, it was imperative that the Firm speak with all Plaintiffs to collect and confirm facts.

6. While the Firm successfully reached Plaintiffs Fernando Hernandez, Juany Guzman, Brandon Rose, Irving Collado, Andres Salas, Bengaly Konate, and Juan Correa, we were unable to contact Plaintiffs Dardaine and Rodriguez within a reasonable amount of time.

7. The Firm attempted to contact Mr. Dardaine and Mr. Rodriguez via email and direct mail on December 5, 2017.

8. Neither Mr. Dardaine nor Mr. Rodriguez responded to these attempts.

9. The Firm then attempted to reach both Mr. Dardaine and Mr. Rodriguez via phone, calling each of them approximately ten times over the course of the next two weeks.

10. The Firm sent follow-up emails to Mr. Dardaine and Mr. Rodriguez on December 7, 2017, to alert them that the Firm was attempting to reach them concerning this action.

11. On December 8, 2017, the Firm contacted Plaintiff Hernandez to see if he had alternative contact information for Mr. Dardaine and Mr. Rodriguez or otherwise knew of a way to reach either of them.

12. Mr. Hernandez, however, was also unsuccessful in his attempts to reach Mr. Dardaine and Mr. Rodriguez.

13. On December 14, 2017, the Firm also contacted Plaintiff Chow to see if he had alternative contact information for Mr. Dardaine and Mr. Rodriguez or knew another way to reach either of them.

14. Like Mr. Hernandez and the Firm, however, Mr. Chow also had no success in his attempts to reach Mr. Dardaine and Mr. Rodriguez.

15. The Firm therefore had to file Plaintiffs' Fifth Amended Complaint on December 18, 2017, without the necessary information for either Mr. Dardaine or Mr. Rodriguez.

16. Although Mr. Dardaine contacted the Firm on the following day, December 19, 2017, it had already been over two weeks since our initial attempt, and the Fifth Amended Complaint had already been filed.

17. The Firm has yet to receive any response or other communication from Mr. Rodriguez.

18. The Firm sent letters to both Mr. Dardaine and Mr. Rodriguez on January 11, 2018, stating that, as a result of their failure to communicate with the Firm, the Firm would no longer be able to represent them and intended to move to withdraw as their attorneys in this action.

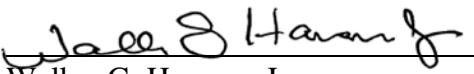
19. The Firm has received no response to these letters from Mr. Dardaine or Mr. Rodriguez.

20. As Plaintiffs Dardaine and Rodriguez have repeatedly failed to communicate with the Firm, the Firm does not believe there is any existing relationship that would allow its representation of them to proceed effectively.

21. The Firm will serve copies of these moving papers on Plaintiffs Dardaine and Rodriguez.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
January 25, 2018

  
Walker G. Harman, Jr.